

REMARKS

In response to the Office Action dated January 25, 2007, Applicant respectfully requests reconsideration and withdrawal of the rejections.

Claims 1-15 were rejected under the first paragraph of 35 U.S.C. §112. The Office Action states that there is no support in the original specification for the recitation in claim 1 that the user controllable heating power control means is "built-in". Although the term "built-in", per se, does not appear in the specification, it is respectfully submitted that the specification, when viewed in conjunction with the figures, fully supports the claimed subject matter. For example, at page 9, lines 10-12, the specification describes a control panel 32 with a layout of control means that is provided on the front of the beverage maker 10. The control means includes heating power control means 34. Referring to Figures 1, 2a and 2b, it can be seen that the control panel 32 with the heating power control means 34 is mounted on the base 30 of the beverage maker. It is respectfully submitted that a person of ordinary skill in the art would understand this disclosure to connote that the heating power control means is built into the beverage maker.

As stated in MPEP §2163, "If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met... 'the description need not be in *ipsis verbis* [i.e., in the same words] to be sufficient' ", citing *Martin v. Johnson*, 454 F.2d 746, 751, 172 U.S.P.Q. 391, 395 (CCPA 1972). It is respectfully submitted that the disclosure meets this requirement.

The rejection also asserts that there is no written description for the term "preset discrete heating power levels". It is respectfully submitted that this concept is described in the paragraph beginning on page 9, line 17. Specifically, the first sentence of this paragraph describes "three power level selection buttons 35a-c corresponding to "Hi", "Lo" or "Medium" heating power levels..." It is respectfully submitted that a person of ordinary skill in the art would recognize this disclosure to mean a plurality of preset discrete heating power levels.

The rejection also states that there is no support in the original specification for the recitation that the heating means is "integral with said fluid compartment". At page 9, lines 6-7, the specification discloses that electrical heating elements 31 are disposed within the heating compartment 30. At page 10, lines 6-7, the specification discloses that the heating compartment 30 is fastened to the first fluid vessel 20. It is respectfully submitted that this disclosure supports the recitation that the heating means is integral with the fluid compartment.

Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-15 were rejected under the second paragraph of 35 U.S.C. §112. The Office Action alleges that there is no antecedent basis for the recitation of "said user-controllable heating power control means", appearing in line 10 of claim 1. It is respectfully submitted that the antecedent basis for this term can be found in lines 3-4 of claim 1, namely "a built-in user controllable heating power control means". Withdrawal of the rejection is respectfully requested.

Claims 1-15 were rejected under 35 U.S.C. §103, on the basis of Belgian Patent No. 635 160. The Office Action acknowledges that there are differences between the subject matter recited in the claims and the disclosure of the Belgian patent. It then goes on to dismiss these differences as being an obvious matter of design choice. It is respectfully submitted that the Office Action does not meet the requirement for a rejection under 35 U.S.C. §103.

As set forth in MPEP §2143, there are three basic criteria that must be met to establish a *prima facie* case of obviousness. One of these criteria is that "the prior art reference...must teach or suggest all the claim limitations." The Office Action acknowledges that the Belgian patent does not teach all of the features recited in the rejected claims. However, it does not refer to any other reference to support the allegation that the elements missing from the Belgian reference are known and would be obvious to include within the beverage maker of the Belgian reference. As such, the Office Action fails to make the requisite showing that would support a rejection under 35 U.S.C. §103.

First, Applicants respectfully traverse the assertion that the Belgian reference discloses all of the claimed subject matter, except for the heating means being integral with the fluid compartment and the beverage compartment being detachably connected to the fluid compartment. The Office Action has not established that all of the other elements recited in the claims are disclosed in the Belgian reference.

For example, claim 1 recites a user controllable heating power control means. The Office Action does not identify any structure in the Belgian patent that corresponds to this claimed element.

Claim 1 also recited that the heating power control means has means for selecting one of a plurality of preset discrete heating power levels. This feature is now recited in new claim 23. The Office Action does not identify any structure in the Belgian patent that corresponds to this claimed element.

The beverage making apparatus that is disclosed in the Belgian patent is a conventional coffee maker that exhibits the limitations of prior beverage brewing devices, in which the brewing process is generally uncontrollable by the user, as discussed in the background portion of the present application. In contrast, the subject matter described in the currently pending claims includes a beverage making apparatus in which the brewing process is controllable, by varying the heating power, so as to adjust the rate of steam production in the fluid compartment. As a result, the transit time of a fluid through the beverage processing means is controllable. See, for example, the specification at page 13, lines 15-25.

The ability to control the transit time of a fluid through the beverage processing means, by controlling the rate of steam production in the fluid compartment, is neither disclosed nor suggested by the Belgian patent. Such a feature provides controllability over the brewing process, and confers advantages over the beverage making apparatus described in the Belgian patent.


The subject matter of the presently pending claims is not disclosed, nor otherwise suggested, by the Belgian patent, and the Office Action does not refer to any other evidence of prior art that suggests the distinguishing features of the claims,

nor the feasibility of incorporating them into the beverage maker of the Belgian patent. Reconsideration and withdrawal of the rejection is respectfully requested.

Respectfully submitted,

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